IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN FREMPONG-ATUAHENE	:	CIVIL ACTION
v.	:	
REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA, et al.	:	NO. 98-0285

MEMORANDUM AND ORDER

HUTTON, J. March 25, 1999

Presently before this Court is the Motion to Dismiss the Second Amended Complaint by Pennrose Developers, Pennrose Properties, Inc., John B. Rosenthal, and John and Jane Does as Employees of Pennrose (collectively, "Pennrose" or the "Pennrose Defendants") (Docket No. 40), the Motion to Dismiss Plaintiff's Amended Complaint by City of Philadelphia, the Department of Licenses & Inspections of the City of Philadelphia, the Zoning Board of Adjustment of the City of Philadelphia, Robert Solvibile, and Robert D'Agostino (collectively, the "City Defendants") (Docket No. 41), the response thereto by pro se Plaintiff Stephen Frempong-Atuahene (Docket No. 48), the Plaintiff's Motion for Reconsideration of Motion for TRO and Preliminary Injunction (Docket No. 39), the response thereto by the Pennrose Defendants (Docket No. 42), the response to Plaintiff's Motion for Reconsideration by City Defendants (Docket No. 44), and Plaintiff's reply to Defendants' response to Plaintiff's Motion for

Reconsideration (Docket No. 46). For the reasons stated below, the Motions to Dismiss by the Pennrose Defendants and City Defendants are **GRANTED**, and the Plaintiff's Motion for Reconsideration is **DENIED as moot**.

I. BACKGROUND

On January 20, 1998, Plaintiff, Stephen Frempong-Atuahene, a pro se litigant, filed a complaint against the City of Philadelphia and its various departments and agencies and a private real estate development entity and its principal officers. On November 6, 1998, Plaintiff filed a second amended complaint, which named the same parties as defendants, named additional individual parties as well as defendants,\[1] and set out twenty-two causes of action. On November 20, 1998, the Plaintiff filed his Supplemental Pleadings, which set out additional allegations, in paragraphs numbered 166-191 divided into Counts Twenty-Three through Twenty-Six.\[2] The second amended complaint alleges that the Defendants

[1]Plaintiff's second amended complaint names the following parties as defendants: 1) Redevelopment Authority of the City of Philadelphia ("RDA"); 2) City of Philadelphia, Department of Licenses and Inspection; 3) Zoning Board of Adjustment of the City of Philadelphia; 4) Pennrose Properties, Inc.; 5) Robert Solvibile, Deputy Managing Director of Department of Licenses and Inspections of the City of Philadelphia; 6) Robert D'Agostino, Zoning Board Administrator; 7) John B. Rosenthal, a principal of Pennrose Properties, Inc.; 8) Richard L. Bazelon, Chairman of RDA; 9) Noel Eisenstate, Executive Director of RDA; 10) John Petro and Nicole Bouvier, employees of RDA; and 11) John and Jane Does employees of RDA, City of Philadelphia; Zoning Board of Adjustment and Department of Licenses and Inspections, City of Philadelphia; and Pennrose Developers and Pennrose Properties, Inc. (collectively, the "Defendants"). (Second Am. Compl. ¶¶ 4-12.)

[2]The November 6th and November 20th filings are referred collectively as the "second amended complaint."

conspired to deprive him of his property located at 6000-18 Baltimore Avenue, Philadelphia, PA 19142 ("Property"). The City Defendants and Pennrose Defendants now move this Court to dismiss Plaintiff's second amended complaint.

Plaintiff's second amended complaint contains twenty-six separate counts and purports to assert both federal and state law claims against all of the Defendants. Plaintiff's second amended complaint alleges facts, which relate to actions allegedly taken by the City of Philadelphia (the "City") and its officials with respect to the Property, some of which actions were apparently taken by the City in 1990. Plaintiff's second amended complaint also alleges facts concerning alleged conspiracies between various City and non-City agencies and City officials with respect to the same property. The claims asserted by Plaintiff in his second amended complaint include twenty separate claims for alleged federal civil rights violations (counts three, four, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-three, twenty-four, twenty-five, and twenty-six of the Amended Complaint), one claim for an alleged violation of his constitutional rights (count five of the Amended Complaint), and five claims for violations of state law (counts one, two, six, twenty-one, and twenty-two of the Amended Complaint). All of Plaintiff's claims stem from the RDA's

condemnation of the property and the Zoning Board's subsequent grant of a zoning variance for the same property.

On December 22, 1998, the Pennrose Defendants filed their motion to dismiss Plaintiff's second amended complaint. On December 31, 1998, the City Defendants filed a motion seeking to dismiss Plaintiff's second amended complaint. On January 28, 1999, the Plaintiff filed a document entitled "Plaintiff's Response to Defendants [sic] Motion to Dismiss Plaintiff's Amended Complaint."

II. DISCUSSION

A. Legal Standard

1. Standard for Dismissal under Rule 12(b)(1)

Pursuant to Federal Rule of Civil Procedure 12(b)(1), a district court can grant a dismissal based on the legal insufficiency of a claim. Dismissal is proper only when the claim clearly appears to be either immaterial and solely for the purpose of obtaining jurisdiction, or is wholly insubstantial and frivolous. Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1408-09 (3d Cir.), cert. denied, 501 U.S. 1222 (1991). When the subject matter jurisdiction of the court is challenged, the party that invokes the court's jurisdiction bears the burden of persuasion. Kehr Packages, 926 F.2d at 1409 (citing Mortensen v. First Fed. Sav. and Loan Ass'n, 549 F.2d 884, 891 (3d Cir.1977)). Moreover, the district court is not restricted to the face of the pleadings, but may review any evidence to resolve factual disputes

concerning the existence of jurisdiction. McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988) (citations omitted), cert. denied, 489 U.S. 1052 (1989).

2. Standard for Dismissal under Rule 12(b)(6)

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957) (emphasis added). In other words, the plaintiff need only "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. (emphasis added).

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),\[3] this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under

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3. Rule 12(b)(6) provides that:

> Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted . . . .

Fed. R. Civ. P. 12(b)(6).

any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). The court will only dismiss the complaint if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

Moreover, a pro se complaint must be liberally construed and held to a less stringent standard than formal pleadings. Estelle v. Gamble, 429 U.S. 97 (1976). A pro se action "can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " Id. at 106, (quoting Haines v. Kerner, 404 U.S. 519, 521, 92 S. Ct. 594, 596 (1972)).

B. Analysis of Plaintiffs' Claims

The Defendants filed motions to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(1) and (b)(6). In their motion, the City Defendants raise two general issues. First, the City Defendants assert that Plaintiff's federal civil rights and constitutional claims should be dismissed under the abstention and ripeness doctrines. Second, the City Defendants contend that Plaintiff's second amended complaint fails to state any claims

under state law. In their motion, the Pennrose Defendants raise a multitude of issues including the two issues mentioned above argued by the City Defendants. For the reasons that follow, the Plaintiff's second amended complaint is dismissed.

1. Federal Claims

In the instant matter, a state court condemnation action and a zoning variance action with respect to the property are still pending in the courts of the Commonwealth of Pennsylvania. On March of 1997, the RDA notified Plaintiff that it intended to file a declaration of taking as to the subject property that was then owned by Plaintiff. (See Second Am. Compl. ¶ 30.) The condemnation action was subsequently filed in the Court of Common Pleas of Philadelphia County at March Term, 1998, No. 3446, and is still pending before that court. Moreover, on November 19, 1997, the Zoning Board of Adjustment heard a request for a variance with respect to the Property that formerly owned by Plaintiff. (See Second Am. Compl. ¶ 39.) This request for a zoning variance is the subject of an appeal taken by Plaintiff to the Court of Common Pleas of Philadelphia County on December 22, 1997, and docketed at December Term 1997, No. 3254, and is the subject of a further appeal taken by Plaintiff to the Commonwealth Court of Pennsylvania, docketed at No. 1212 C.D. 1998.\[4]

[4]At the time of the zoning variance request, Plaintiff was no longer the legal owner of the Property. It had already been condemned by the (continued...)

The Pennsylvania Eminent Domain Code, 26 Pa.C.S.A. §§ 1-401 et seq. (Purdon Supp. 1987), provides "a complete and exclusive procedure" to govern all condemnations for public purposes in the state. 26 Pa.C.S.A. § 1-303. A condemnation of plaintiff's property can be effectuated only by the filing of a declaration of taking in the court of common pleas for the county in which the property is located. 26 Pa.C.S.A. § 1-402(a). Within 30 days, an owner may file preliminary objections challenging the power or right of the condemnor to condemn the property. 26 Pa.C.S.A. § 1-406. Also, if an owner suffers a compensable injury before a declaration of taking is filed, he or she may compel the condemnor to proceed with condemnation. See, e.g., St. Catherine Church v. Mountaintop Area Joint Sanitary Auth., 58 Pa.Commw.Ct. 181, 182-83, 427 A.2d 726, 726 (1981). These statutory procedures "fully protect ... the rights of the property owner and guarantee ... to him the constitutional safeguards to which he is entitled, including appropriate appellate review." Valley Forge Golf Club v. Upper Merion Township, 422 Pa. 227, 230, 221 A.2d 292, 293 (1966). See also Accord Kao v. Red Lion Mun. Auth., 381 F. Supp. 1163, 1166 (M.D. Pa. 1974) (Pennsylvania law preserves all constitutional rights due private property owners with respect to public taking of

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[4](...continued)
RDA, which was then vested with fee simple title to the property under state law. See Pa. Eminent Domain Code, 26 P.S. § 1-402 (title shall pass to condemnor upon filing of declaration of taking).

land). Ultimate review of federal issues is reposed in the Supreme Court of the United States. 28 U.S.C. § 1257.

"To avoid unwarranted interference with state court jurisdiction, federal courts presented with actions of this kind have almost uniformly dismissed them." Eddystone Equip. and Rental Corp. v. Redev. Auth. of the County of Delaware, Civ.A. No.87-8246, 1988 WL 52082, *1 (E.D. Pa. May 17, 1988). See e.g., Forest Hills Utility Co. v. City of Heath, 539 F.2d 592, 594- 96 (6th Cir. 1976) (exercise of jurisdiction over action to enjoin condemnation would require excessive federal interference with a state regulatory scheme); Hohensee v. State Dept. of Highways, 383 F.2d 784, 784 (3d Cir. 1967) (action to recover judgment for taken property dismissed because plaintiff had not invoked aid of state court); Vartan v. Harristown Dev. Corp., 655 F. Supp. 430, 438 (M.D. Pa. 1987) (property owner's § 1983 claim challenging proposed condemnation on procedural and substantive due process grounds dismissed because plaintiff had opportunity to file preliminary objections in state court once condemnation proceedings commenced); Kadash v. City of Williamsport, 362 F. Supp. 1343, 1346-47 (M.D. Pa. 1973) (court lacked jurisdiction over action to enjoin condemnation on grounds that it was for a non-public use). The essentially local character of this dispute and the availability of constitutional remedies in state court argue strongly against federal intervention, although the action is cast as a civil rights

violation. See Ryckman, "Land Use Litigation, Federal Jurisdiction, and the Abstention Doctrines," 69 Cal. L. Rev. 377 (1981). Because Plaintiff's claims may be vindicated by a favorable outcome in the state court actions, his federal claims in the instant action are not ripe for federal review. Accordingly, Plaintiff's federal law claims are dismissed for lack of subject matter jurisdiction.

2. State Law Claims

Plaintiff asserts five claims for violations of state law (counts one, two, six, twenty-one, and twenty-two of the Amended Complaint). Plaintiff's second amended complaint alleges jurisdiction based on federal question as well as diversity of citizenship. (Second Am. Compl. ¶ 2.) The Pennrose Defendants assert, however, that no diversity jurisdiction exists. They assert that once the federal law claims have been dismissed, this Court should dismiss the state law claims under Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction. (Pennrose Mem. at 24 n.11.)

In his second amended complaint, Plaintiff alleges that he is a citizen of Republic of Ghana, Africa, and resides at 1650 Roselyn Street, Philadelphia, Pennsylvania. (Second Am. Compl. § 3.) Plaintiff does not allege, however, whether he is a permanent resident and a domiciliary of Pennsylvania. (Id.)

Title 28, U.S.C. § 1332 provides in pertinent part that, for purposes of diversity, "an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled." 28 U.S.C. § 1332(a). Because of this provision, it is possible that an individual might be a citizen or subject of a foreign state but nevertheless be someone deemed a citizen-for-jurisdiction of one of the United States, if that individual is a permanent resident alien domiciled in a particular state.

The present record, however, does not establish whether the Plaintiff is domiciled in his native country or in the Commonwealth of Pennsylvania. If he is a permanent resident alien domiciled in Pennsylvania, then the effect of the final paragraph of § 1332(a) would be to destroy diversity. Cf. Foy v. Schantz, Schatzman & Aaronson, 108 F.3d 1347, 1349-50 (11th Cir.1997) (diversity would have been destroyed in suit between Florida citizen and alien residing in Florida if alien had attained permanent resident status). A party questioning diversity jurisdiction in a case in which an alien is a party is to challenge the alien's citizenship for jurisdictional purposes, not assume that the opposing party has to negate the possibility of resident alien citizenship status. See Karazanos v. Madison Two Assoc., 147 F.3d 624, 628 (7th Cir. 1998). But see Woods- Leber v. Hyatt Hotels of Puerto Rico, Inc., 951 F. Supp. 1028 (D.P.R. 1996),

(suggesting that the party asserting jurisdiction must negate the possibility that a foreign citizen is a permanent resident alien), aff'd, 124 F.3d 47 (1st Cir. 1997). Accordingly, at this stage of the proceedings, this Court cannot dismiss Plaintiff's state law claims pursuant to Federal Rule of Civil Procedure 12(b)(1). The Court will, therefore, now consider each of Plaintiff's state law claims.

a. Count One: Defacto Condemnation

Count one of Plaintiff's second amended complaint purports to state a claim for "de facto" or inverse condemnation, arising out of an equity action allegedly commended by the City in July of 1990, with respect to the real property at 60000-18 Baltimore Avenue. (Second Am. Compl. ¶¶ 13-15.) Count one does not allege, however, that an actual "taking" occurred in 1990 as a result of this action. Rather, the only claim is that the City, as a result of this equity action, injured Plaintiff's real property. (Second Am. Compl. ¶ 24.)

Pennsylvania law provides for a five-year statute of limitation for inverse condemnation actions, where there has been an "injury" to the property, but where no "taking" has occurred. See 42 Pa.C.S. § 5526. Therefore, inasmuch as the instant action was filed in 1998, more than five years after the alleged "de facto" taking occurred, count one of Plaintiff's second amended complaint is barred by the applicable statute of limitations.

Accordingly, count one of Plaintiff’s second amended complaint is dismissed.

b. Count Two: Tortious Interference

Count two of Plaintiff's second amended complaint purports to state a claim for tortious interference with a contractual relationship. (Second Am. Compl. ¶¶ 25-43.) Plaintiff alleges that the condemnation action and the zoning variance request with respect to the real property at 6000-18 Baltimore Avenue were acts that constituted the tortious interference with his alleged contractual relations. (Second Am. Compl. ¶¶ 30-41.)

Under Pennsylvania law, a plaintiff must establish four elements to sustain a claim for tortious interference: (1) the existence of a prospective contractual relation between plaintiff and a third party; (2) defendant's purpose or intent to harm the plaintiff by preventing completion of a contractual relationship; (3) improper conduct, which is neither privileged nor justified, on the part of the defendant; and (4) actual legal harm resulting from the defendant's actions. See Nathason v. Medical College of Pa., 926 F.2d 1368, 1392 (3d Cir. 1991). If one of those elements is missing, the plaintiff can not state a viable cause of action. Because Plaintiff fails to satisfy the first prong of the four-part test necessary to state a claim for tortious interference, the Court need not consider further.

(1) Prospective Contractual Relation

The Pennsylvania Supreme Court has defined "prospective contractual relation" as "something less than a contractual right,

something more than a mere hope." Thompson Coal Co. v. Pike Coal Co., 488 Pa. 198, 412 A.2d 466, 471 n. 7 (Pa.1980). "This must be something more than a mere hope or the innate optimism of a salesman.... 'This is an objective standard which of course must be supplied by adequate proof.'" Id. at 471 (quoting Glenn v. Point Park College, 441 Pa. 474, 272 A.2d 895, 898-99 (Pa.1971) (footnote and citation omitted)). It exists if there is a reasonable probability that a contract will arise from the parties' current dealings. See Glenn, 272 A.2d at 898-899.

Merely pointing to an existing business relationship or past dealings, however, does not reach this level of probability. See Gen. Sound Tel. Co., Inc., v. AT & T Communications, Inc., 654 F. Supp. 1562, 1565 (E.D. Pa.1987) (finding that opportunity to bid on a contract is insufficient to establish the existence of a prospective contract under Pennsylvania law); Thompson, 412 A.2d at 471 (finding that existing year-to-year lease on certain property did not amount to a reasonable probability of renewal, despite the existing business relationship). Moreover, in the context of a breach of contract claim, if the breach only incidentally affects the plaintiff's business relations with third parties, then the plaintiff's only cause of action lies in contract. See Glazer v. Chandler, 414 Pa. 304, 200 A.2d 416, 418 (Pa.1964).

In the instant matter, Count two is utterly devoid of any specifics that can enable this Court to determine whether a

contractual relationship existed. Plaintiff fails to state, with any particularity or specificity, what particular contractual relationship, actual or prospective, was interfered with and how such interference occurred. Moreover, the variance request was admittedly made after the condemnation action had divested Plaintiff of whatever interest he had in the Property. (See Second Am. Compl. ¶ 39.) Hence, no contract with respect to the Property could have been interfered with by the zoning variance request as Plaintiff no longer owned the property when the variance request was made. Accordingly, Plaintiff fails to satisfy the first prong of the four-part test necessary to sustain a claim for tortious interference.

c. Count Six: Tort -- Slander of Title

Count six of Plaintiff's second amended complaint purports to state a claim for slander of title. (Second Am. Compl. ¶¶ 68-72.) Plaintiff alleges that the City and RDA Defendants "maliciously and unlawfully" commenced a condemnation action against the Property, and the Pennrose Defendants "improperly" caused a zoning change of the Property. (Second Am. Compl. ¶ 70.) The Pennrose Defendants contend that Plaintiff fails to state a claim because he does not allege "any malice on the part of the Pennrose Defendants." (Pennrose Mem. at 25.) The City Defendants rely on the arguments set forth by the Pennrose Defendants. (City Mem. at 8.)

The essentials of the tort of slander of title are the publication, or communication to a third person, of false statements concerning the plaintiff, his property, or his business. See College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 919 F. Supp. 756 (D. N.J. 1996). An action for slander of title safeguards an owner's marketable interest in property against another person's false and malicious representation of the owner's title to the property. Triester v. 191 Tenants Ass'n, 272 Pa. Super. 271, 415 A.2d 698 (1979); Young v. Geiske, 209 Pa. 515, 58 A. 887 (1904); Comment f to Section 647 of the Restatement (Second) of Torts (1976). "[M]alice--that is, absence of good faith--... is of the gist of the action." Forman v. Cheltenham Nat. Bank, 348 Pa. Super. 559, 561, 502 A.2d 686, 687 (Pa. Super., Dec. 27, 1985) (quoting Hygienic Underwear Co. v. Way, 35 Pa. Super. 229, 233 (1908)); Comment d to § 647 of the Restatement.

The element of malice, express or implied, in making slanderous statements respecting the title of another's property, is essential to the recovery of damages, and in the absence of proof of such malice the action will fail. While the statement may be false, or made without right, there can be no legal malice and no action will lie, if it is made in good faith and with probable cause. If the statement is made by a stranger, the law presumes malice; but if the party making the statement is himself

interested in the matter and announces the defect of title in good faith, either to protect his own interest or to prevent the commission of a fraud, there is no presumption of malice." (Citations omitted.) 5 Thompson on Real Property § 2395 at 194-95.

In this case, Plaintiff has not alleged any malice on the part of any of the Defendants besides the RDA and the City Defendants. Thus, for that reason alone, count six of Plaintiff's second amended complaint fails to state a viable claim for slander of title regarding all defendants besides the RDA and the City Defendants. Plaintiff's slander of title claim fails to state a viable claim against RDA and the City Defendants as well. Plaintiff fails to state any facts demonstrating bad-faith on the part of the RDA and City Defendants. See Forman, 348 Pa. Super. at 365 (dismissing action where defendant had a valid claim against plaintiff). Plaintiff merely sets forth facts concerning the condemnation and zoning variance, which he admits were done pursuant to Pennsylvania eminent domain laws.

Furthermore, Plaintiff fails to allege any facts demonstrating that he has been denied due process in the condemnation and variance actions. See Cleveland Indus. Square, Inc. v. White, 52 F.3d 324, 1995 WL 154912, *4 (6th Cir. 1995) (dismissing "plaintiff's claim regarding slander of title [that] fails to state facts demonstrating the absence of due process in the deprivation of plaintiff's property") (citing Mathews v.

Eldridge, 424 U.S. 319 (1976)). Indeed, Pennsylvania's eminent domain procedures fully protect the rights of Plaintiff. See Valley, 422 Pa. at 230, 221 A.2d at 293. Accordingly, Plaintiff's claim for slander of title is dismissed.

d. Count Twenty-One: Negligent Infliction

Count twenty-one purports to state a claim for negligent infliction of emotional distress. (Second Am. Compl. ¶¶ 158-161.) The elements necessary for the establishment of a cause of action for negligent infliction of emotional distress were set by the Supreme Court in 1979. A plaintiff must establish the following elements: (1) he must be near the scene of the accident; (2) his shock or distress must result from a direct emotional impact caused by the sensory or contemporaneous observance of the accident, as opposed to learning of the accident from others after its occurrence; and (3) he must be closely related to the injured victim. Sinn v. Burd, 486 Pa. 146, 170-71, 404 A.2d 672, 685 (1979). Plaintiff's second amended complaint fails to allege any facts that even remotely satisfy these requirements. Accordingly, Plaintiff's claim for negligent infliction of emotional distress is dismissed.

e. Count Twenty-Two: Intentional Infliction

Count twenty-two purports to state a claim for intentional infliction of emotional distress. (Second Am. Compl.

¶¶ 162-165.) As indicated in Field v. Philadelphia Electric Co., 388 Pa. Super. 400 (Pa. Super. Sep. 12, 1989), a cause of action for intentional infliction of emotional distress will lie where the dictates of section 46 of the Restatement (Second) of Torts are satisfied. Id. at 427. That section provides: "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm." Restatement (Second) of Torts § 46.

Thus, at the onset, the defendant's conduct must be extreme and outrageous. Parano v. O'Connor, 433 Pa. Super. 570, 641 A.2d 607 (1994). As the Superior Court in Hunger v. Grand Cent. Sanitation, 447 Pa. Super. 575 (1996) stated:

> It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

Id. at 583-584. The conduct complained of in this case -- the condemnation of Plaintiff's property, which has the legal safeguard that Plaintiff is entitled to payment of just compensation for his loss -- cannot be deemed to be an outrageous or atrocious act so as to give rise to liability for the intentional infliction of

emotional distress. Accordingly, Plaintiff fails to state a claim for intentional infliction of emotional distress.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN FREMPONG-ATUAHENE	:	CIVIL ACTION
	:	
v.	:	
	:	
REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA, et al.	:	NO. 98-0285

O R D E R

AND NOW, this 25th day of March, 1999, upon consideration of the Motion to Dismiss the Second Amended Complaint by Pennrose Developers, Pennrose Properties, Inc., John B. Rosenthal, and John and Jane Does as Employees of Pennrose (collectively, "Pennrose" or the "Pennrose Defendants") (Docket No. 40), the Motion to Dismiss Plaintiff's Amended Complaint by City of Philadelphia, the Department of Licenses & Inspections of the City of Philadelphia, the Zoning Board of Adjustment of the City of Philadelphia, Robert Solvibile, and Robert D'Agostino (collectively, the "City Defendants") (Docket No. 41), the response thereto by pro se Plaintiff Stephen Frempong-Atuahene (Docket No. 48), the Plaintiff's Motion for Reconsideration of Motion for TRO and Preliminary Injunction (Docket No. 39), the response thereto by the Pennrose Defendants (Docket No. 42), the response to Plaintiff's Motion for Reconsideration by City Defendants (Docket No. 44), and Plaintiff's reply to Defendants' response to Plaintiff's Motion for Reconsideration (Docket No. 46), IT IS HEREBY ORDERED that the Motions to Dismiss by the Pennrose

Defendants and City Defendants are **GRANTED**, and the Plaintiff's Motion for Reconsideration is **DENIED as moot**.

IT IS FURTHER ORDERED that:

(1) Counts one, two, six, twenty-one, and twenty-two of Plaintiff's second amended complaint are **DISMISSED** pursuant to Federal Rule of Civil Procedure 12(b)(6);

(2) All other counts of Plaintiff's second amended complaint (federal law claims) are **DISMISSED** pursuant to Federal Rule of Civil Procedure 12(b)(1); and

(2) The Clerk of Court shall mark this case closed.

BY THE COURT:

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HERBERT J. HUTTON, J.